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2
3 ROGER J. MARZULLA
4 Assistant Attorney General
5 Land and Natural Resources Division
6 BARRY S. SANDALS
7 Environmental Enforcement Section
8 Land and Natural Resources Division
9 United States Department of Justice
10 100 Van Ness Avenue, 22nd Floor
11 San Francisco, California 94102
12 Telephone: (415) 556-9027

13
14 STEPHEN M. MCNAMEE
15 United States Attorney

16 JAMES P. LOSS
17 Chief, Civil Section
18 4000 U.S. Courthouse
19 230 N. First Avenue
20 Phoenix, Arizona 85025
21 Telephone: (602) 261-3011

22 Attorneys for Plaintiff United States
23 of America

24 WILLIAM N. HEDEMAN, JR.
25 LISA MARIE MARTIN (Arizona Bar No.: 010668)
26 Beveridge & Diamond, P.C.
27 1333 New Hampshire Ave., NW
28 Washington, D.C. 20036
Telephone: (202) 828-0200

Attorneys for Defendant
Goodyear Tire & Rubber Company

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

23
24 UNITED STATES OF AMERICA,
25 Plaintiff,

26 v.

27 GOODYEAR TIRE & RUBBER COMPANY,
28 Defendant.

CIVIL ACTION NO.

CONSENT DECREE

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2 WHEREAS, the United States of America ("United States"), on
3 behalf of the Administrator of the United States Environmental
4 Protection Agency ("EPA"), has filed a Complaint in this matter
5 pursuant to the Comprehensive Environmental Response,
6 Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601
7 et seq., as amended by the Superfund Amendments and
8 Reauthorization Action of 1986, Pub. L. No. 99-499, 100 Stat.
9 1613 (1986) ("SARA"), to compel Defendant, the Goodyear Tire &
10 Rubber Company ("Goodyear"), to perform remedial action and to
11 pay all response costs that have been and will be incurred by
12 the United States in response to releases and threatened
13 releases of hazardous substances from a facility known as the
14 Phoenix-Goodyear Airport Site located in Goodyear, Arizona.

15 WHEREAS, the United States alleges that releases of
16 hazardous substances, including trichloroethylene ("TCE") and
17 chromium, have occurred at this Site and that Goodyear is a
18 liable party pursuant to Section 107(a) of CERCLA, 42 U.S.C.
19 § 9607(a).

20 WHEREAS, in 1983, EPA listed an area including the Site on
21 the National Priorities List ("NPL") for appropriate response
22 actions pursuant to CERCLA.

23 WHEREAS, pursuant to Section 122 of CERCLA, 42 U.S.C.
24 § 9622, Goodyear and the United States have stipulated and
25 agreed to the making and entry of this Consent Decree
26 (hereinafter "Decree" or "Consent Decree") prior to the taking
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2 of any testimony, based upon the pleadings herein, without any
3 admission of liability or fault as to any allegation or matter
4 arising out of the pleadings of any party or otherwise.

5 WHEREAS, Goodyear and the United States agree that
6 settlement of this matter and entry of this Consent Decree is
7 made in good faith in an effort to avoid further expensive and
8 protracted litigation, without any admission as to liability
9 for any purpose.

10 WHEREAS, each undersigned representative of the parties to
11 the Consent Decree certifies that he or she is fully authorized
12 to enter into the terms and conditions of this Decree and to
13 execute and legally bind such party to this document.

14 NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as
15 follows:
16

17 I. JURISDICTION

18 The Court has jurisdiction over the subject matter of this
19 action and the signatories to this Consent Decree pursuant to
20 Sections 106, 107, 113 and 122 of CERCLA, 42 U.S.C. §§ 9606,
21 9607, 9613 and 9622, and 28 U.S.C. §§ 1331 and 1345.
22

23 II. PARTIES

24 The parties to this Consent Decree are the Goodyear Tire &
25 Rubber Company, and the United States of America, on behalf of
26 the Environmental Protection Agency ("EPA").
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3 III. BINDING EFFECT

4 A. This Consent Decree shall apply to and be binding upon
5 the signatories, their successors, and assigns. Goodyear shall
6 provide a copy of this Consent Decree, as lodged, and shall
7 provide all relevant additions to the Consent Decree, as
8 appropriate, to each person, including all contractors and
9 subcontractors, retained to perform the Remedial
10 Design/Remedial Action ("the Work") contemplated by this
11 Decree, and shall condition any contract for the Work on
12 compliance with this Consent Decree.

13 B. Goodyear shall implement the Work as that term is
14 defined in this Consent Decree.

15
16 IV. DEFINITIONS

17 The following terms used in this Consent Decree are defined
18 as follows:

19
20 1. "Operable Unit" ("OU") means the portion of the remedy for
21 the Site encompassed by the 1987 ROD and further defined by the
22 Work.

23
24 2. "1987 Record of Decision" ("1987 ROD") means the Record of
25 Decision for the Site issued by the Regional Administrator of
26 Region 9 on September 29, 1987, attached hereto as Appendix A.

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2 3. "Site" means Subunit A of Section 16 of the southern
3 portion of the Phoenix - Goodyear Airport Superfund Site in
4 Goodyear, Arizona.

5
6 4. "Work" means the design and construction of the groundwater
7 extraction, treatment and recharge system and all other tasks
8 to be performed by Goodyear pursuant to Paragraph VII of this
9 Consent Decree, as may be modified pursuant to the provisions
10 of this Consent Decree, and any schedules or plans required to
11 be submitted pursuant thereto.

12
13 5. "Work Assumption Penalty" means the amount to be paid to
14 EPA by Goodyear pursuant to Paragraph VI if EPA assumes a
15 portion or all of the Work required by this Consent Decree.

16
17 V. PURPOSE

18 The purpose of this Consent Decree is to serve the public
19 interest by protecting the public health, welfare, and the
20 environment from releases and threatened releases of hazardous
21 substances at the Site by implementation of Work in the form of
22 an OU. Goodyear and the United States recognize that the OU
23 does not constitute the final remedy for the Site, and that the
24 final remedy will only be determined after completion of a
25 Remedial Investigation/Feasibility Study ("RI/FS") and
26 execution by EPA of a Record of Decision which determines that
27 final remedy.

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2 The OU is intended to control the migration and level of
3 contaminants in the groundwater immediately surrounding the
4 Site through implementation of the Work by Goodyear. This OU
5 shall be conducted as described in the 1987 ROD and Paragraph
6 VII of this Consent Decree.
7

8 VI. OBLIGATIONS FOR THE WORK

9 A. Goodyear shall finance and perform, at its expense, the
10 implementation of the Work. When submitting work plans as part
11 of such Work, Goodyear may propose to use, or to incorporate,
12 work it has already conducted. Work already completed shall be
13 acceptable to the extent it is consistent with the remedy
14 chosen by EPA and the protocols approved by EPA pursuant
15 thereto.

16 B. Notwithstanding any approvals which may be granted by
17 the United States or other governmental entities, the parties
18 agree that no warranty of any kind is provided by the United
19 States as to the efficacy of the Work.

20 C. Goodyear shall design, implement, and complete the Work
21 in accordance with the National Oil and Hazardous Substances
22 Pollution Contingency Plan ("NCP"), as set forth in 50 Fed.
23 Reg. 47912 (1985) (effective February 18, 1986), and all
24 amendments thereto that are effective and applicable to any
25 activity undertaken pursuant to this Consent Decree, and also
26 in accordance with the standards, specifications, and schedule
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2 of completion set forth in or approved by EPA pursuant to
3 Paragraph VII of this Consent Decree. The Court finds and the
4 parties agree that the 1987 ROD and the Work, as set forth in
5 this Consent Decree, are consistent with the NCP.

6 D. Goodyear shall appoint a representative ("Project
7 Coordinator") to act on its behalf to execute the Work.

8 E. 1. In the event EPA determines that Goodyear has
9 failed to implement Subparagraphs D.5, 9, or 10 of Paragraph
10 VII of this Consent Decree in a timely manner, or in a manner
11 that is consistent with the NCP or the requirements of this
12 Consent Decree, EPA may assume the performance of any and all
13 portions of the Work as EPA determines to be necessary. Prior
14 to such assumption, EPA will provide Goodyear's Project
15 Coordinator with fifteen (15) days advance notice of intent to
16 perform a portion of or all of the Work. During the fifteen
17 day period of time, EPA shall meet with Goodyear's Project
18 Coordinator and attempt to resolve the issues of concern.

19 2. If, at the end of those fifteen days, EPA determines
20 that Goodyear has failed to implement Subparagraphs D.5, 9 or
21 10 of Paragraph VII of this Consent Decree in a timely manner,
22 or in a manner that is consistent with the NCP or the
23 requirements of this Consent Decree, Goodyear may invoke the
24 dispute resolution provisions of this Consent Decree. If the
25 dispute resolution process determines that EPA should not have
26 determined to assume the Work pursuant to this Paragraph,
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2 Goodyear shall pay no stipulated penalties or Work Assumption
3 Penalty, and may resume the Work in a timely manner, if EPA
4 approves. By invoking dispute resolution, Goodyear may contest
5 whether EPA properly determined that the requirements of this
6 Paragraph for EPA performance were satisfied and what, if any,
7 stipulated penalties are due; provided, however, that invoking
8 dispute resolution does not stay EPA's right to perform the
9 Work; and provided further, that Goodyear may under no
10 circumstances contest the level of stipulated penalty
11 applicable to a class of violations. If, on the other hand, at
12 the end of the fifteen day period, EPA determines that its
13 concerns will be resolved satisfactorily, EPA shall withdraw
14 its advance notice of intent to perform a portion or all of the
15 Work.

16 3. In the event EPA assumes the performance of a portion
17 or all of the Work, any liability of Goodyear for stipulated
18 penalties pursuant to Paragraph XXI shall run only until sixty
19 (60) days after the EPA notifies Goodyear's Project Coordinator
20 of the intent to perform a portion or all of the Work. If
21 Goodyear invokes dispute resolution, the obligation to pay
22 stipulated penalties is stayed until the completion of dispute
23 resolution proceedings. If the resolution of such proceedings
24 is that the parties or the Court determine that it was
25 appropriate under this Paragraph for EPA to have assumed the
26 performance of some or all of the Work, then the obligation to
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2 pay stipulated penalties extends to the full sixty (60) days.
3 If the dispute resolution determines that EPA should not have
4 assumed any responsibilities for the Work pursuant to this
5 Paragraph, then no stipulated penalties will be due.

6 4. Goodyear shall pay an additional penalty (Work
7 Assumption Penalty) of one hundred thousand dollars (\$100,000)
8 if EPA assumes performance of a portion or all of the Work.
9 Fifty thousand dollars (\$50,000) of such Work Assumption
10 Penalty shall be paid thirty (30) days after EPA provides
11 notice of intent to perform a portion or all of the Work unless
12 Goodyear invokes dispute resolution as provided for in
13 Paragraph XXII of this Consent Decree. If Goodyear invokes
14 dispute resolution, Goodyear shall pay the Work Assumption
15 Penalty, plus interest at the rate specified in 28 U.S.C.
16 § 1961, plus two percent running from the date of the receipt
17 of EPA's notice, at the conclusion of dispute resolution, if
18 the result of the dispute resolution is that it was appropriate
19 under this Paragraph for EPA to have assumed performance of
20 some or all of the Work.

21 Such penalty shall be in addition to reimbursement to EPA
22 for the costs of the Work performed by EPA in accordance with
23 Subparagraph E.6.

24 5. If the dispute resolution pursuant to Paragraph XXII
25 determines that it was appropriate for EPA to have assumed
26 performance of some or all of the Work, Goodyear may have an
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2 additional reasonable length of time at EPA's discretion to
3 cure its default and resume the performance of the Work. In
4 the event that EPA does permit Goodyear to resume the
5 performance of the Work, Goodyear shall be excused from 50
6 percent of all penalties under this Paragraph and Paragraph XXI
7 if Goodyear is able to implement Subparagraph D.10 of Paragraph
8 VII in a timely manner. If Goodyear does not resume the Work,
9 the remaining fifty thousand dollars (\$50,000) shall be paid
10 thirty (30) days after EPA provides notice to Goodyear that
11 routine operation of the Work has commenced.

12 6. If EPA performs portions of the Work in accordance with
13 this Paragraph VI, Goodyear shall reimburse EPA for the costs
14 of doing such Work within sixty (60) calendar days of receipt
15 of demand for payment of such costs. Goodyear reserves the
16 right to contest, through the dispute resolution process set
17 out in Paragraph XXII, such costs as not actually incurred or
18 as incurred inconsistent with the NCP. Any demand for payment
19 made by EPA pursuant to this provision shall include itemized
20 cost documentation that verifies that the claimed costs were
21 incurred and that the amount of the demand was properly
22 calculated.

23 F. All activities undertaken by Goodyear pursuant to this
24 Consent Decree shall be undertaken in accordance with the
25 requirements of all applicable state and federal laws,
26 regulations, and all "applicable" and "relevant and
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2 appropriate" federal and state environmental requirements as
3 provided in Section 121(d) of CERCLA, 42 U.S.C. § 9621(d). EPA
4 has determined that the obligations and procedures authorized
5 under this Consent Decree are consistent with its authority
6 under applicable law.

7 G. Pursuant to 42 U.S.C. § 9621(e), no federal, state, or
8 local permits are necessary for the Work onsite conducted
9 pursuant to § 106 of CERCLA, within the boundaries as defined
10 by the NPL, including actions taken pursuant to this Consent
11 Decree.

12
13 VII. WORK TO BE PERFORMED

14
15 A. Goodyear shall perform all work necessary to implement
16 the OU as defined by EPA's ROD and further defined pursuant to
17 this Consent Decree. All design and construction obligations
18 of this Paragraph, through and including the obligations
19 imposed by Subparagraph D.5., shall be effective upon signature
20 of this Consent Decree by Goodyear.

21 B. All Work shall be performed by qualified employees or
22 contractors of Goodyear in accordance with the schedule in
23 Subparagraph D. below. (Except where noted otherwise, all
24 dates referred to in the schedule are calendar days; however,
25 should a deadline fall on a weekend or a Federal holiday, the
26 deadline shall be construed to continue to the next business
27 day.)
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2 C. Requirements for the Work:

3 1. The Work consists of:

4 a) the design and construction of a groundwater

5 extraction/reinjection system to contain

6 hydraulically the contaminants of subunit A,

7 defined in the 1987 ROD, and keep them from

8 migrating to subunits B/C, defined in the 1987

9 ROD.

10 b) the design and construction of a groundwater

11 treatment system to treat extracted water to meet

12 federal and state standards for treatment plant

13 discharge levels prescribed in Table I of the ROD.

14 2. Groundwater Extraction/Reinjection System

15 A "zone of capture" will be established

16 unless the parties agree that it is not

17 technically feasible. The vertical and lateral

18 boundaries of the zone of capture will be

19 determined by groundwater monitoring.

20 The zone of capture will encompass the area of

21 the Site in which groundwater monitoring

22 indicates contaminant levels in excess of the

23 treatment plant discharge levels identified in

24 Table I of the 1987 ROD. EPA agrees that

25 Goodyear shall be allowed for the purpose of

26 defining the zone of capture to demonstrate to
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2 EPA that values of contaminants above Table I
3 levels are not statistically significant.

4 3. Reinjection/hydraulic gradient

5 Goodyear shall maintain the zone of capture
6 by ensuring a hydraulic gradient from the edges
7 of the zone of capture to the extraction wells.
8 The parties shall determine during submission and
9 review of the conceptual design submitted in
10 accordance with Subparagraph D.3. whether to
11 extend the zone of capture to include all areas
12 of the Site at which the levels of contaminants
13 exceed the treatment plant discharge levels
14 prescribed in Table I of the ROD.

15 4. Because the OU is not the final remedy for
16 the Site, the 1987 ROD does not define the level
17 of cleanup required for the aquifer at the Site.

18 5. Treatment Plant Discharges

19 a) All water from the groundwater extraction
20 system will be treated and reinjected. Treatment
21 shall assure that reinjected water will meet
22 federal and state standards for treatment plant
23 discharge levels prescribed in Table I of the
24 1987 ROD. During start-up activities, extracted
25 water to and from the treatment plant will be
26 checked on a schedule as provided for in the
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2 Operations and Maintenance Plan submitted in
3 accordance with Subparagraphs D.8. and D.10.
4 b) During routine operations, the treatment
5 plant discharge must meet federal and state
6 standards for treatment plant discharge levels
7 prescribed in Table I of the 1987 ROD on a daily
8 basis, based on a sampling schedule to be
9 presented in the Operation and Maintenance Plan.
10 The Operation and Maintenance Plan developed by
11 Goodyear pursuant to Subparagraph D.8. shall
12 include compliance monitoring programs to
13 demonstrate continued compliance with the
14 requirements of this Subparagraph C.5. Any
15 measurable noncompliance with these levels shall
16 be reported orally to EPA within forty-eight (48)
17 hours of discovery. A written submission shall
18 also be provided within five (5) days. This
19 submission shall include a description of the
20 noncompliance and its cause; the period of
21 noncompliance, including the dates and times, and
22 if the noncompliance has not been corrected, the
23 anticipated time it is expected to continue; and
24 steps taken or planned to reduce, eliminate and
25 prevent reoccurrence of the noncompliance.
26 Complying with these reporting requirements shall
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2 not excuse any stipulated penalties resulting
3 from the noncompliance.

4 c) Air stripping will be used to reduce
5 volatile organic compound ("VOC") contamination
6 to meet federal and state standards as prescribed
7 in Table I of the 1987 ROD. The air stripping
8 towers will be equipped with air emission
9 controls in order, among other purposes, to meet
10 Maricopa County requirements, including Rule 32-C
11 and any other applicable provisions of the
12 Arizona Implementation Plan under the Clean Air
13 Act. If the Maricopa County requirements are
14 revised and approved by EPA pursuant to the Clean
15 Air Act to specify that sources such as the air
16 stripping towers are not subject to air emission
17 controls, then Goodyear may petition EPA to agree
18 to amend this Consent Decree to remove the air
19 emission control requirement of this Paragraph.
20 Any dispute with regard to any such petition
21 shall be subject to dispute resolution in
22 accordance with Paragraph XXII.

23 6. For purposes of this Consent Decree,
24 Goodyear shall continue operation of the OU until
25 the earliest of the following events occurs:
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2 (a) Eight years from the date Goodyear
3 begins routine operation activities as
4 specified in Subparagraph D.10., after which
5 Goodyear shall turn over the facility and
6 equipment to EPA or its designee;

7 (b) Selection by EPA of a final remedy for
8 the Site that does not incorporate the Work
9 specified in the Consent Decree; or

10 (c) Termination of the Work pursuant to
11 Paragraph XXXI of this Consent Decree.

12 7. EPA will make available to Goodyear in a
13 timely manner all data and analyses for the Site.
14

15 D. Schedule For the Work

16 1. Within 14 days after April 1, 1988, Goodyear shall
17 submit a pilot study scope of Work. This shall present the
18 methodology for conducting the pilot studies for
19 reinjection and extraction wells, recharge basins, and
20 treatability studies.

21 2. EPA shall review and approve/disapprove the pilot
22 study scope of Work within 70 days after April 1, 1988.

23 3. Within 168 days after April 1, 1988 or 112 days of
24 EPA's decision to approve/disapprove the pilot study scope
25 of Work, whichever is later, Goodyear shall submit a
26 conceptual design for the OU (30% of complete final
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2 design). The conceptual design shall include, but not be
3 limited to, the following:

- 4 a. Design analysis, including analysis necessary
5 to satisfy state permitting requirements
6 b. Location of extraction/reinjection wells (or
7 recharge basins)
8 c. Major equipment list for treatment plant
9 d. Approximate pumping rates for all wells
10 e. Site plan (piping/layout)
11 f. Easements
12 g. Piping and flow diagrams for treatment plant
13 h. Results of pilot studies
14 i. Ancillary equipment (substations, etc.)
15 j. Response to concerns raised in the
16 Responsiveness Summary to the 1987 ROD concerning
17 design criteria issues.

18 4. EPA shall review and approve/disapprove the
19 conceptual design within 14 days of submittal.

20 5. Within 238 days after April 1, 1988, or 56 days of
21 EPA's decision to approve/disapprove the conceptual design,
22 whichever is later, Goodyear shall submit final draft
23 design and specifications. These shall include, but not be
24 limited to:

- 25 a. Design analysis
26 b. Piping and instrument diagram for the
27 treatment plant
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2 c. Specifications for the treatment plant or
3 plants and groundwater system sufficient to
4 comply with the treatment plant discharge
5 requirements and zone of capture requirements of
6 Paragraph VII

7 d. QA/QC Plan

8 e. Health & Safety Plan

9 f. Preliminary Construction Operation and
10 Maintenance Plan

11 g. Preliminary Groundwater Treatment Operation
12 and Maintenance Plan including:

13 i. Recommended frequency of water level
14 measurements and water quality testing for
15 extraction, reinjection and monitoring
16 wells. These shall include separate
17 schedules for startup and routine operations.

18 ii. Proposed decision making process and
19 criteria for shutting down specific
20 extraction wells.

21 iii. Recommended frequency for testing of
22 air emissions during startup and routine
23 operations.

24 h. Construction schedule and phasing.

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2 6. EPA shall review and approve/disapprove the final
3 draft design and specifications within 14 days of submittal.

4 7. Within 308 days after April 1, 1988 or 56 days of
5 EPA's decision to approve/disapprove the final draft design
6 and specifications, whichever is later, Goodyear shall
7 begin construction of facilities for implementation of the
8 OU; provided, however, that Goodyear shall in no event be
9 required to commence construction under this schedule until
10 entry of this Consent Decree. Goodyear shall initiate
11 preconstruction activities during EPA review of the final
12 draft design and specifications.

13 8. Within 378 days after April 1, 1988, or 126 days
14 of EPA's decision to approve/disapprove the final draft
15 design and specifications, Goodyear shall submit final
16 draft Operation and Maintenance Plans to EPA for approval.

17 9. Within 448 days after April 1, 1988 or 196 days
18 of EPA's decision to approve/disapprove the final draft
19 design and specifications, Goodyear shall commence startup
20 activities.

21 10. Goodyear shall begin and thereafter maintain
22 routine operation activities in accordance with an approved
23 Operation and Maintenance Plan by a date to be established
24 by EPA after consultation with Goodyear. The date set by
25 EPA shall permit a reasonable time for Goodyear to complete
26 start-up testing of all facility components necessary for
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2 routine operation of the OU. The date shall not be more
3 than two years after the completion of construction
4 activities.
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6 VIII. REPORTING AND APPROVALS/DISAPPROVALS

7 A. Monthly Progress Reports

8 1. Goodyear shall provide written progress reports to
9 EPA on a monthly basis. These progress reports shall describe
10 all actions taken to comply with this Consent Decree, including
11 a general description of the Work activities commenced or
12 completed during the reporting period, Work activities
13 projected to be commenced or completed during the next
14 reporting period, and any problems that have been encountered
15 or are anticipated by Goodyear in commencing or completing the
16 Work activities. These progress reports shall be submitted to
17 EPA by the 10th of each month for work done the preceding month
18 and planned for the current month.
19

20 2. If Goodyear fails to submit any progress report in
21 accordance with the schedule set forth above, then Goodyear
22 shall be considered to be in violation of this Consent Decree
23 and subject to stipulated penalties in accordance with
24 Paragraph XXI of this Consent Decree.

25 B. Reports, Plans, and Other Items
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2 1. Any reports, plans, specifications (including
3 discharge or emission limits), schedules, appendices, and
4 attachments required or established by this Consent Decree are,
5 upon approval by EPA, incorporated into this Consent Decree.
6 Any noncompliance with such EPA approved reports, plans,
7 specifications (including discharge or emission limits),
8 schedules, appendices, or attachments shall be considered a
9 failure to comply with this Consent Decree and subject to
10 stipulated penalties in accordance with Paragraph XXI of this
11 Consent Decree. Any such determination of non-compliance with
12 which Goodyear disagrees shall be deemed a dispute and subject
13 to the provisions of Paragraph XXII (Dispute Resolution).

14 2. If EPA disapproves any plans or reports (other
15 than monthly progress reports), or other items required to be
16 submitted to EPA for approval pursuant to Paragraph VII (Work
17 to be Performed), Paragraph X (Quality Assurance/Quality
18 Control), or Paragraph XIV (Site Account), Goodyear shall have
19 ten (10) working days from the receipt of such disapproval to
20 correct any deficiencies and resubmit the plan, report, or item
21 for EPA approval.

22 3. Any disapprovals by EPA shall be in writing and
23 shall include an explanation by EPA of why the plan, report, or
24 item is being disapproved.

25 4. In attempting to correct any deficiency as
26 required by Subparagraph B.2., Goodyear shall address each of
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2 EPA's comments and resubmit to EPA the previously disapproved
3 plan, report, or item with the required changes within the ten
4 (10) day deadline established by that Subparagraph, except that
5 the period for Goodyear's response may be extended by mutual
6 agreement of the parties.

7 5. If any plan, report, or item is substantively
8 deficient after resubmission, then Goodyear shall be deemed to
9 be in violation of this Consent Decree and subject to
10 stipulated penalties as governed by Paragraph XXI of this
11 Consent Decree. Any such determination of non-compliance with
12 which Goodyear disagrees shall be deemed a dispute and subject
13 to the provisions of Paragraph XXII ("Dispute Resolution"). In
14 the event that the deficiency in the plan, report or other item
15 is corrected by any resubmission permitted under this
16 Subparagraph B., then Goodyear shall not be deemed to be in
17 violation of this Consent Decree.

18 C. 1. EPA shall submit monthly reports to Goodyear
19 showing EPA contractor activities and actual expenditures in
20 the past thirty (30) days at the PGA Superfund Site and a
21 projection of contractor activities and expenses expected to be
22 conducted and incurred by EPA in the succeeding thirty (30)
23 days. These reports shall be submitted to Goodyear by the 10th
24 day of each month. EPA shall also discuss the most recent
25 report with Goodyear during or immediately after each Technical
26 Committee meeting.

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2 2. In the event EPA should fail to comply with any of
3 the requirements of Subparagraph 1., it shall not affect any
4 obligations of Goodyear under this Consent Decree or law.
5

6 IX. WORKER HEALTH AND SAFETY PLAN

7 The Worker Health and Safety Plan that Goodyear is required
8 to submit pursuant to Paragraph VII of this Consent Decree
9 shall satisfy the requirements of the Occupational Safety and
10 Health Guidance for Hazardous Waste Site Activities [October
11 1985 (DHH 5 NIOSH) Publication No. 85-115] and EPA's Standard
12 Operating Safety Guides.
13

14 X. QUALITY ASSURANCE/QUALITY CONTROL

15 A. Goodyear shall submit to EPA for approval, at the same
16 time as it submits the final draft design documents in
17 accordance with Paragraph VII.D.5., a Quality Assurance/Quality
18 Control ("QA/QC") Plan for Remedial Construction activities.
19 The Remedial Construction QA/QC Plan shall, where applicable,
20 be prepared in accordance with current EPA guidance, Interim
21 Guidelines and Specifications for Preparing Quality Assurance
22 Project Plans, QAMS-005/80, and subsequent amendments to such
23 guidelines upon written notification by EPA to Goodyear of such
24 amendments. Additionally, the Remedial Construction QA/QC Plan
25 shall include elements necessary for the implementation of
26 trial test(s) of the pumping, treatment and reinjection system
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2 used as part of the Work. The Remedial Construction QA/QC Plan
3 shall include a description of the mechanism that shall be used
4 to verify that the pumping, treatment and reinjection process
5 is operating within acceptable limits. Upon approval and
6 notice by EPA to Goodyear, Goodyear shall implement the
7 Remedial Construction QA/QC Plan.

8 B. Goodyear shall utilize QA/QC procedures in accordance
9 with the QA/QC plans submitted pursuant to this Consent Decree,
10 and shall utilize standard EPA chain of custody procedures, as
11 documented in National Enforcement Investigations Center
12 Policies and Procedures Manual, as revised in November 1984,
13 and the National Enforcement Investigations Center Manual for
14 the Evidence Audit, published in September 1981, for all sample
15 collection and analysis activities. In order to provide
16 quality assurance and maintain quality control regarding all
17 samples collected pursuant to this Consent Decree, Goodyear
18 shall:

19 1. Ensure that all contracts with laboratories
20 utilized by Goodyear for analysis of samples taken pursuant
21 to this Consent Decree provide for access of EPA personnel
22 and EPA authorized representatives to assure the accuracy
23 of laboratory results related to the Work.

24 2. Ensure that laboratories utilized by Goodyear for
25 analysis of samples taken pursuant to this Consent Decree
26 perform all analyses according to EPA methods or methods
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2 deemed in advance satisfactory by EPA. Accepted EPA
3 methods are documented in the "Contract Lab Program
4 Statement of Work for Inorganic Analysis" and the "Contract
5 Lab Program Statement of Work for Organic Analysis" dated
6 July 1985.

7 3. Ensure that all laboratories utilized by Goodyear
8 for analysis of samples taken pursuant to this Consent
9 Decree participate in an EPA or EPA equivalent QA/QC
10 program. As part of the QA/QC program and upon request by
11 EPA, such laboratories shall perform at their expense
12 analyses of samples provided by EPA to demonstrate the
13 quality of each laboratory's data. EPA may provide to each
14 laboratory a maximum of four samples per year per
15 analytical combination (e.g., four aqueous samples for
16 analysis by gas chromatography/mass spectrometry, four
17 soil/sediment samples for analysis by gas
18 chromatography/mass spectrometry).

19
20 XI. PROJECT COORDINATOR

21 A. By April 6, 1988, EPA and Goodyear shall each designate
22 Project Coordinators to monitor the progress of the Work and to
23 coordinate communication between EPA and Goodyear. The EPA
24 Project Coordinator shall have the authority vested in the
25 Remedial Project Manager and the On-Scene Coordinator by 40
26 C.F.R. § 300 et seq., 50 Fed. Reg. 47912 (Nov. 20, 1985),
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2 including such authority as may be added by amendments to 40
3 C.F.R. § 300, as well as the authority to ensure that the Work
4 is performed in accordance with all applicable statutes,
5 regulations, and this Consent Decree. The EPA Project
6 Coordinator shall also have the authority to require a
7 cessation of the performance of the Work or any other activity
8 at the Site that, in the opinion of the EPA Project
9 Coordinator, may present or contribute to an endangerment to
10 public health, welfare, or the environment or cause or threaten
11 to cause the release of hazardous substances from the Site. In
12 the event the EPA Project Coordinator suspends the Work or any
13 other activity at the Site, the parties may extend the
14 compliance schedule of this Consent Decree as appropriate for
15 the minimum period of time necessary to perform the Work, but
16 in no event for a period longer than the time of the suspension
17 of Work or other activities. Should Goodyear desire to extend
18 the compliance schedule pursuant to this Paragraph, Goodyear
19 shall propose and EPA shall determine the length of any
20 extension. A disagreement over the length of such an extension
21 is a dispute to be resolved through dispute resolution. If the
22 EPA Project Coordinator suspends the Work or any other activity
23 for any of the reasons set forth in this Subparagraph A and
24 those reasons are due to acts or omissions of Goodyear or its
25 contractor(s) not required by this Consent Decree, then any
26 extension of the compliance schedule shall be at EPA's
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2 discretion, subject to dispute resolution procedures, if
3 invoked by Goodyear. The Project Coordinators do not have the
4 authority to modify in any way the terms of this Consent
5 Decree, including Appendix A or any design or construction
6 plans. The absence of the EPA Project Coordinator from the
7 Site shall not be cause for stoppage of the Work. EPA and
8 Goodyear may change their respective Project Coordinators by
9 notifying the other party in writing at least seven (7)
10 calendar days prior to the change.

11 B. Goodyear's Project Coordinator may assign other
12 representatives, including other contractors, to serve as a
13 Site representative for oversight of performance of daily
14 operations during remedial activities.

15 C. The EPA Project Coordinator may assign other
16 representatives, including other EPA employees or contractors,
17 to serve as a Site representative for oversight of performance
18 of daily operations during remedial activities. Prior to
19 invoking formal dispute resolution procedures, any unresolved
20 disputes arising between the EPA Site representative and
21 Goodyear or its contractors shall be referred to the EPA
22 Project Coordinator.

23
24 XII. ACCESS

25 A. To the extent that access to or easements over property
26 on the Site but no longer owned or controlled by Goodyear or
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2 access or easements over property other than the Site is
3 required for the proper and complete performance of this
4 Consent Decree, Goodyear shall use its best efforts to obtain
5 access agreements from the present owners or those persons who
6 have control within sixty (60) calendar days of the entry of
7 this Consent Decree. Access agreements shall provide
8 reasonable access to Goodyear, the United States, the State of
9 Arizona, and their authorized representatives. In the event
10 that access agreements are not obtained within the 60 day
11 period, Goodyear shall notify EPA within five (5) calendar days
12 thereafter regarding both the lack of, and efforts to obtain,
13 such agreements. If necessary, EPA agrees to use its best
14 efforts, consistent with its legal authority, to assist
15 Goodyear in obtaining such access. The Force Majeure
16 provisions of Paragraph XXIII shall govern any delays caused by
17 difficulties in obtaining necessary access to or easements over
18 property. In the event EPA exercises its access authorities
19 under Section 104(e) of CERCLA, as amended by SARA, in order to
20 obtain access for the performance of this Consent Decree,
21 Goodyear shall reimburse EPA for any amount of costs incurred
22 in the exercise of such powers.

23 B. 1. After April 1, 1988, Goodyear shall assure that
24 Goodyear, the United States, the State, and their
25 representatives, including contractors, shall have
26 access at all reasonable times to the Site and any
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2 contiguous property owned or controlled by Loral on
3 April 1, 1988. In the event Loral transfers some or
4 all of its property located within the boundaries of
5 the Site to a third party after April 1, 1988,
6 Goodyear shall: (a) assure that the instrument
7 effecting the conveyance or transfer of title contains
8 a copy of this Consent Decree, the 1987 ROD, and the
9 listing of the Site on the NPL; and (b) use its best
10 efforts to assure access to the property from the
11 third party. EPA and Goodyear acknowledge receipt of
12 the April 12, 1988 letter from counsel for Loral
13 Corporation attached as Appendix B. Goodyear also may
14 request assistance from EPA pursuant to Subparagraph
15 A, above.

16 2. Any person desiring to obtain access pursuant to
17 this Subparagraph B shall: (a) notify the Goodyear
18 Project Coordinator at least twenty-four (24) hours in
19 advance; and (b) upon receipt of an acceptable time
20 and date from the Goodyear Project Coordinator, comply
21 with all applicable provisions of the Worker Health
22 and Safety Plan submitted as part of the work plans
23 required by this Consent Decree and approved by EPA;
24 provided, however, that EPA, exercising best efforts,
25 may determine under appropriate circumstances that
26 less notice by EPA is necessary.
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2 C. Access shall be for purposes of conducting any activity
3 authorized by this Consent Decree, including, but not limited
4 to:

- 5 1. Monitoring the progress of activities taking
6 place;
- 7 2. Verifying any data or information submitted to
8 EPA;
- 9 3. Conducting investigations relating to
10 contamination at or near the Site;
- 11 4. Obtaining samples at or near the Site; and
- 12 5. Inspecting and copying records, operating logs,
13 contracts, or other documents utilized to assess
14 Goodyear's compliance with this Consent Decree.

15
16 XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

17 Goodyear shall demonstrate its ability to complete the Work
18 and to pay all claims that arise from the performance of the
19 Work by obtaining, and presenting to EPA for approval within
20 thirty (30) calendar days after April 1, 1988, one of the
21 following items: 1) performance bond; 2) letter of credit; or
22 3) guarantee by a third party. In lieu of any of the three
23 items listed above, Goodyear may present to EPA, within twenty
24 (20) calendar days after April 1, 1988, financial information
25 sufficient to satisfy EPA that Goodyear has sufficient assets
26 to make it unnecessary to require additional assurances. If
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2 Goodyear relies on financial information for financial
3 assurance, Goodyear shall quarterly submit such financial
4 information. If EPA determines the financial assurances to be
5 inadequate, EPA shall notify Goodyear in writing of the basis
6 of its determination. EPA shall consider the policies of the
7 financial assurance requirements of the Resource Conservation
8 and Recovery Act, 42 U.S.C. § 6901 et seq., in determining the
9 adequacy of financial assurances. Goodyear may invoke dispute
10 resolution to resolve a dispute over financial assurances.
11 However, Goodyear shall obtain one of the three financial
12 instruments listed above pending resolution of the dispute. If
13 the dispute resolution process determines that Goodyear's
14 financial assurances are inadequate, Goodyear shall obtain one
15 of the three other financial instruments listed above within
16 thirty (30) calendar days of such determination.
17

18 XIV. SITE ACCOUNT

19 Goodyear shall maintain a segregated account dedicated to
20 funding Goodyear's obligations pursuant to this Consent
21 Decree. Starting April 30, 1988, Goodyear shall quarterly
22 submit an account statement to EPA demonstrating that the
23 account is funded adequately to ensure performance of
24 Goodyear's Consent Decree obligations for the following quarter.
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2 XV. SUBMISSION OF DOCUMENTS, SAMPLING, AND ANALYSIS

3 A. Goodyear shall submit a quality assurance report to EPA
4 on a quarterly basis on January 30th, April 30th, July 30th,
5 and October 30th of each year. This report shall contain
6 information that demonstrates that Goodyear is complying with
7 Paragraph XI (QA/QC) of this Consent Decree and the QA/QC Plans
8 submitted pursuant to this Consent Decree.

9 B. Any analytical or design data generated or obtained by
10 Goodyear that are related to the Work shall be provided to EPA
11 within seven (7) days of any request by EPA for such data.

12 C. EPA employees and EPA's authorized representatives
13 shall have the right, upon request, to take splits of any
14 samples obtained by Goodyear or anyone acting on Goodyear's
15 behalf in the implementation of the Work. Goodyear shall also
16 have the right upon request to obtain splits of samples taken
17 independently by EPA or its authorized representatives.

18 D. During the design, construction, and start-up
19 activities, Goodyear shall notify EPA seven (7) days prior to
20 any sampling conducted by the Goodyear or anyone acting on its
21 behalf. EPA shall be notified thirty (30) days prior to the
22 disposal of any such sample, and EPA shall have an opportunity,
23 upon request, to take possession of all or a portion of such
24 sample.

25 Goodyear need not provide EPA with 7-day notice of routine
26 sampling relating to the routine operation of the treatment
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2 system. Prior to commencement of the routine operation of the
3 treatment system, however, Goodyear shall provide EPA with a
4 schedule for all routine sampling relating to the operation of
5 the treatment system. Goodyear shall notify EPA seven (7) days
6 in advance of any changes in the routine sampling schedule.
7 Goodyear need not provide EPA with advance notice of changes in
8 the routine treatment system sampling as a result of unexpected
9 conditions. Goodyear shall, however, notify EPA within
10 forty-eight (48) hours of such occurrence and shall provide EPA
11 with the results of analysis of such sampling when the results
12 become available.

13 E. All data, factual information, and documents submitted
14 by Goodyear to EPA and the State pursuant to this Consent
15 Decree shall be subject to public inspection. Goodyear shall
16 not assert a claim of confidentiality regarding any
17 hydrogeological or chemical data, any data submitted in support
18 of a remedial proposal, or any other scientific or engineering
19 data. Goodyear may assert a claim of confidentiality as to any
20 process, method, technique, or any description thereof that
21 Goodyear claims constitute proprietary or trade secret
22 information developed by Goodyear or developed by the
23 contractor or the contractor's subcontractors. In addition,
24 Goodyear may assert business confidentiality claims covering
25 part or all of the information provided in connection with this
26 Consent Decree in accordance with Section 104(e)(7) of CERCLA,
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2 42 U.S.C. § 9604(e)(7) and pursuant to 40 C.F.R. § 2.203(b) or
3 applicable state law. Any such claim shall be subject to EPA's
4 confidentiality determination procedures and, if determined to
5 be confidential, afforded the protection by EPA provided in 40
6 C.F.R., Part 2, Subpart B.

7 Documents which are asserted to be attorney work product or
8 subject to privilege under law are not subject to inspection or
9 copying under this Consent Decree provided that, upon request,
10 Goodyear shall provide EPA with an identification of the title
11 and subject matter of each document for which a privilege is
12 asserted, and an explanation as to why the privilege is
13 applicable to the document or portions thereof.

14
15 XVI. RETENTION OF RECORDS

16 Goodyear shall preserve and retain all records and
17 documents now in its possession or control that relate in any
18 manner to the Site, regardless of any document retention policy
19 to the contrary, for no less than six years after the
20 completion of the construction of the Work or termination of
21 this Consent Decree, whichever is later.

22 Until completion of the Work and termination of this
23 Consent Decree, Goodyear shall preserve, and shall instruct the
24 contractor, the contractor's subcontractors, and anyone else
25 acting on Goodyear's behalf at the Site to preserve (in the
26 form of originals or exact copies, or in the alternative,
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1 microfiche of all originals) all records, documents and
2 information of whatever kind, nature, or description relating to
3 the performance of the Work at the Site. Upon the completion of
4 the Work, copies of all such records, documents, and information
5 shall be delivered to the EPA Project Coordinator.

6
7 **XVII. CLAIMS AGAINST THE FUND**

8 Goodyear agrees not to make a claim against the Hazardous
9 Substances Superfund, 42 U.S.C. §§ 9611 and 9612, for
10 reimbursement of any funds expended by Goodyear in complying
11 with any of the requirements of this Consent Decree.

12
13 **XVIII. RESPONSE AUTHORITY**

14 Nothing in this Consent Decree shall be deemed to limit
15 the response authority of EPA under Section 104 of CERCLA,
16 42 U.S.C. § 9604, or under Section 106 of CERCLA, 42 U.S.C.
17 § 9606, or under any other federal response authority. This
18 Paragraph may not be used to amend the Work except as
19 authorized by CERCLA.

20
21 **XIX. REIMBURSEMENT OF COSTS**

22 **A.** Goodyear shall pay \$2,616,589.00 to EPA in full
23 satisfaction of all claims for recovery of response costs
24 incurred on or before December 24, 1987 by EPA and the United
25 States Department of Justice. If Goodyear pays the full amount
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2 within thirty (30) days of entry of this Consent Decree, no
3 interest shall be owed. Goodyear shall also have the following
4 two alternative options:

5 1. Goodyear may pay the full amount within ninety
6 (90) days of entry of this Consent Decree, in which
7 case Goodyear shall also pay interest accruing from
8 the thirty-first day after entry, in an amount
9 equivalent to the amount that would be prescribed for
10 prejudgment interest on the same principal amount by
11 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

12 2. Goodyear may pay one-third of the total amount
13 owed no later than ninety (90) days after entry of
14 this Consent Decree; one-third of the total amount no
15 later than four hundred fifty-five (455) days after
16 entry; and one-third within eight-hundred twenty (820)
17 days after entry. Each of these three payments shall
18 include interest on all outstanding amounts accruing
19 from the thirty-first day after entry of this Consent
20 Decree at the rate specified in Subparagraph 1.

21 B. If Goodyear makes the payments required by Subparagraph
22 A., EPA covenants not to bring any civil judicial or civil
23 administrative action to recover any response costs incurred by
24 EPA or the Department of Justice at the PGA Superfund Site, as
25 designated on the NPL ("PGA Superfund Site") on or before
26 December 24, 1987. EPA and the United States reserve the right
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3 to seek judicial or administrative relief for recovery of all
4 other response costs.

5 C. For each payment required by this Paragraph, Goodyear
6 shall deliver a check payable to the Hazardous Substances
7 Superfund in the specified amount to the following address:

8 U.S. Environmental Protection Agency
9 Superfund Accounting
10 P.O. Box 371003M
Pittsburgh, PA 15251
ATTENTION: Collection Officer for Superfund

11 A copy of the check and letter enclosing the check shall be
12 submitted to EPA in accordance with Paragraph XXIV.

13 D. No payment by Goodyear in accordance with this
14 Paragraph is a penalty, fine, or monetary sanction of any kind.

15
16 XX. RESERVATION OF RIGHTS

17 A. Notwithstanding compliance with the terms of this
18 Consent Decree, including the successful completion of the Work
19 to EPA's satisfaction, Goodyear is not released from liability,
20 if any, for any actions taken by EPA respecting the Site other
21 than as provided in Paragraph XIX.

22 B. 1. Except as provided in Paragraph XIX, EPA reserves
23 the right to take any enforcement action pursuant to CERCLA
24 and/or any other legal authority, including the right to
25 seek injunctive relief, monetary penalties, and/or punitive
26 damages for any civil or criminal violation of law and/or
27 this Consent Decree.
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3 2. EPA expressly reserves all rights and defenses
4 that it may have, including its right to disapprove work
5 performed by Goodyear and to seek to compel Goodyear
6 pursuant to Section 106 of CERCLA and/or Section 7003 of
7 RCRA to perform tasks in addition to the Work as provided
8 in this Consent Decree. EPA reserves the right to
9 undertake removal actions and/or remedial actions at any
10 time pursuant to Section 104 of CERCLA. EPA reserves the
11 right to seek reimbursement from Goodyear for costs
12 incurred by EPA pursuant to Section 107 of CERCLA and/or
13 Section 7003 of RCRA in taking such actions.

14 C. The parties recognize that Goodyear is entering into
15 this Consent Decree as a compromise of disputed claims and that
16 Goodyear does not admit, accept, or intend to acknowledge any
17 liability or fault with respect to any matter arising out of or
18 relating to the Site. Goodyear retains the right to controvert
19 the validity of any factual or legal claims or determinations
20 made herein by EPA, except that Goodyear does not contest the
21 entry of this Consent Decree and agrees to be bound by its
22 terms.

23 D. Except as expressly provided in Paragraph XVII or
24 elsewhere in this Consent Decree, Goodyear expressly reserves
25 all rights and defenses that it may have, including the right
26 to make a claim or counterclaim against the United States,
27 alleging that because of acts or omissions of the United States
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2 Navy, the United States should be liable to Goodyear for
3 contribution for the costs of the Work incurred by Goodyear at
4 the PGA Superfund Site, unless a satisfactory settlement as to
5 allocation of financial responsibility is reached between
6 Goodyear and the Department of Defense by June 1, 1988.
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9 XXI. STIPULATED PENALTIES

10 A. Consistent with Subparagraph VIII.B., and also except
11 where excused by Paragraph XXIII (Force Majeure), the following
12 stipulated penalties shall apply:

13 1. Goodyear shall pay stipulated penalties of \$500
14 per day for submission of a deficient or delinquent
15 monthly status report as called for in Subparagraph
16 VIII.A.; for the submission of a deficient or
17 delinquent Site Account report as called for in
18 Paragraph XIV; for the submission of a deficient or
19 delinquent quarterly quality assurance report as
20 called for in Subparagraph XV.A.; or for failure to
21 submit analytical or design data as called for in
22 Subparagraph XV.B. Goodyear shall not be liable for
23 more than 31 days of violation for submission of any
24 one deficient or delinquent monthly status report.

25 2. Goodyear shall pay the following stipulated
26 penalties for failure to comply with the requirements
27 of Subparagraph VII.D.3. (Conceptual Design
28 Submission):

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<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 20th calendar day	\$2,500
21st through 45th calendar day	\$6,000
46th calendar day and beyond	\$10,000

3. Goodyear shall pay the following stipulated penalties for failure to comply with the requirements of Subparagraph VII.D.5. (Final Draft Design and Specifications Submission) or Subparagraph VII.D.8. (Final Draft Operation and Maintenance Plan Submission):

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 20th calendar day	\$3,500
21st through 45th calendar day	\$7,000
46th calendar day and beyond	\$10,500

4. Goodyear shall pay the following stipulated penalties for failure to comply with the requirements of Subparagraph VII.D.9. (Commencement of Startup):

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 20th calendar day	\$4,000
21st through 45th calendar day	\$8,000
46th calendar day and beyond	\$12,000

5. During the period of time from six months after Goodyear's commencement of startup activities of the Work to commencement of routine operations as specified in Subparagraph VII.D.10., Goodyear shall pay stipulated penalties for all discharges of VOCs in excess of the treatment plant discharge levels established in Table 1 of the 1987 ROD. Goodyear reserves the right to resample within 24 hours to demonstrate to the satisfaction of EPA that a sample result does not accurately reflect the concentration of VOCs actually discharged. In the event that Goodyear is able to make such a demonstration, stipulated penalties shall not be assessed. Temporary exceedances due to changes in operations which are consistent with an Operation and Maintenance Plan approved in accordance with Subparagraph VII.D.8. shall not be considered violations of this Consent Decree or be subject to statutory or stipulated penalties. Goodyear shall be deemed to be in

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2 violation from the first day of sample exceedance and
3 for each day thereafter until sample results
4 demonstrate compliance with the 1987 ROD Table 1
5 treatment plant discharge levels and shall pay
6 penalties based on the following schedule:
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8 Penalty Per Day of Violation

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10 Up to one order of magnitude over Table 1 levels	Up to two orders of magnitude over Table 1 levels	Over two orders of magnitude over Table 1 levels
12		
13 \$500	\$1,500	\$2,500

14 6. After routine operations are commenced pursuant
15 to Subparagraph VII.D.10., Goodyear shall pay
16 stipulated penalties for all discharges of VOCs and
17 chromium in excess of treatment plant discharge levels
18 established in Table 1 of the 1987 ROD. Goodyear
19 reserves the right to resample within 24 hours to
20 demonstrate to the satisfaction of EPA that a sample
21 result does not accurately reflect the concentration
22 of VOCs or chromium actually discharged by Goodyear.
23 In the event that Goodyear is able to make such a
24 demonstration, stipulated penalties shall not be
25 assessed. Goodyear shall be deemed to be in violation
26 from the first day of sample exceedance and for each
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day thereafter until sample results demonstrate compliance. Temporary exceedances due to changes in operation consistent with an Operation and Maintenance Plan approved in accordance with Subparagraph VII.D.8. shall not be subject to statutory or stipulated penalties. All other exceedances shall be subject to stipulated penalties pursuant to the following schedule:

Days of Violation	Up to One Order of Magnitude Over Table 1 Levels	Up to Two Orders of Magnitude Over Table 1 Levels	Over Two Orders of Magnitude Over Table 1
1st through 30th calendar day	\$1,000	\$2,000	\$3,000
31st through 60th calendar day	\$2,000	\$4,000	\$6,000
61st through 90th calendar day	\$3,000	\$6,000	\$9,000
91st calendar day and beyond	\$5,000	\$10,000	\$15,000

After 30 violations of any order of magnitude, the next violation (of any order) shall be assessed in the second (31-60) tier. After 60 violations of any order of magnitude, the next violation (of any order) shall be assessed in the third (61-90) tier. After 90

violations of any order of magnitude, the next violation (of any order) shall be assessed in the fourth (91 and beyond) tier.

7. Goodyear shall pay the following stipulated penalties for failure to begin routine operation activities pursuant to Subparagraph VII.D.10.:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 20th calendar day	\$5,000
21st through 45th calendar day	\$15,000
46th calendar day and beyond	\$25,000

8. After routine operations are commenced pursuant to Subparagraph VII.D.10, Goodyear shall pay the following stipulated penalties for failure to comply with the requirements of Subparagraphs VII.C.3. and VII.D.10.:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 20th calendar day	\$5,000
21st through 45th calendar day	\$10,000
46th calendar day and beyond	\$15,000

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2 Goodyear shall be deemed to be in violation from the first
3 day after the deadline for performance of a requirement of this
4 Consent Decree until the requirement is satisfied, unless
5 performance is excused pursuant to this Consent Decree.

6 B. Stipulated penalties under this Paragraph shall be paid
7 by check payable to the Hazardous Substances Superfund and
8 shall be paid by the 15th day of the month following the month
9 in which the violation occurred. Failure to timely pay a
10 stipulated penalty is an additional violation of the Consent
11 Decree subject to stipulated penalties based on the schedule
12 for the compliance obligation violated. A copy of the check
13 and the letter forwarding the check, including a brief
14 description of the non-compliance, shall be submitted to EPA in
15 accordance with Paragraph XXIV.

16 C. The stipulated penalties established in this Consent
17 Decree shall be the exclusive mechanism for the assessment and
18 collection of penalties for noncompliance with the provisions
19 subject to stipulated penalties.

20 D. In the event that stipulated penalties in accordance
21 with Subparagraphs XXII. A.1.-4. become due and payable during
22 the pendency of this Consent Decree, EPA shall delay
23 requirement of payment of fifty percent of the stipulated
24 penalties until the later of: (1) the deadline for
25 commencement of routine operations pursuant to Subparagraph
26 VII.D.10.; and (2) if Goodyear timely invokes dispute
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2 resolution, the completion of a dispute resolution or judicial
3 review as specified in Paragraph XXII. EPA shall, at that
4 time, forgive payment of the remaining 50 percent of such
5 penalties if Goodyear has met the deadline for commencement of
6 routine operations in accordance with Subparagraph VII.D.10.,
7 as adjusted by any extensions of the schedule in accordance
8 with this Consent Decree.
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10 XXII. DISPUTE RESOLUTION

11 A. In the event that the parties cannot resolve any dispute
12 arising under this Consent Decree, then the interpretation
13 advanced by EPA shall be considered binding unless Goodyear
14 invokes the dispute resolution provisions of this Paragraph.
15 Goodyear's decision to invoke dispute resolution shall not
16 constitute a force majeure under Paragraph XXIV herein.

17 B. Any dispute as to which this Consent Decree provides
18 for dispute resolution shall in the first instance be the
19 subject of informal negotiations between EPA and Goodyear.
20 Such period of informal negotiations shall not extend beyond
21 forty-five (45) days, unless the parties agree otherwise,
22 during which time the parties may also agree to utilize
23 appropriate Alternative Dispute Resolution ("ADR") mechanisms.

24 C. At the termination of unsuccessful informal
25 negotiations, should Goodyear choose not to accept EPA's
26 position, Goodyear may file with the Court a petition which
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1 shall describe the nature of the dispute and include a proposal
2 for its resolution. Goodyear may not file such a petition
3 until informal negotiations are completed; provided, however,
4 that any party may present the matter to the Court for
5 resolution earlier than forty-five (45) days from the time the
6 dispute arises if the matter involves stipulated or statutory
7 penalties or if EPA seeks to have Goodyear perform work which
8 is in addition to the terms of this Consent Decree. The filing
9 of a petition asking the Court to resolve a dispute shall not
10 of itself postpone the deadlines for Goodyear to meet its
11 obligations under this Consent Decree with respect to the
12 disputed issue, or stay the provisions of Paragraph XXII
13 (Stipulated Penalties), except that Goodyear shall not be
14 obligated to pay penalties accrued until completion of the
15 dispute resolution process.
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17 D. The United States shall have sixty (60) days to respond
18 to the petition. In the event of a dispute over an EPA
19 decision regarding the extent, adequacy, or duration of the
20 Work, including any relief pursuant to Paragraph XXXI of this
21 Consent Decree, Goodyear shall have the burden of demonstrating
22 that the EPA decision is inconsistent with the NCP. EPA's
23 decision will be upheld by the Court unless shown by Goodyear
24 to be arbitrary and capricious or otherwise not in accordance
25 with law. Judicial review regarding any issue concerning the
26 adequacy of a response action shall be limited to the
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2 administrative record pursuant to Section 113(j) of CERCLA, 42
3 U.S.C. § 9613(j). The adequacy of the response action
4 includes: (1) The adequacy of plans, and procedures to
5 implement those plans, submitted for approval in accordance
6 with this Consent Decree; and (2) the adequacy of the Work
7 required by this Consent Decree. If the Court finds that
8 Goodyear has satisfied its burden and therefore is the
9 prevailing party in the dispute, Goodyear shall pay no
10 stipulated penalties for failing to timely perform the disputed
11 actions. In the event of a dispute, Goodyear shall continue
12 its undisputed activities required by this Consent Decree to
13 the fullest extent possible pending resolution of the dispute.

14 E. If the Court does not find that Goodyear has satisfied
15 its burden, Goodyear shall transmit payment of all penalties
16 which have accrued during the dispute, plus interest at the
17 rate specified in 28 U.S.C. § 1961, plus two percent, to the
18 Hazardous Substances Superfund within fifteen (15) working days
19 of resolution of the dispute.

20 F. Except as provided in Subparagraph D., in the event of
21 a dispute over whether a stipulated penalty is owed, the United
22 States shall bear the burden of showing noncompliance with the
23 provision of the Consent Decree in question.
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XXIII. FORCE MAJEURE

Goodyear shall perform all the requirements of this Consent Decree according to the time limits set out in the Consent Decree and referenced supporting documents or any modification thereto unless its performance is prevented or delayed by events which constitute a force majeure.

"Force Majeure" for purposes of this Consent Decree is defined as any event arising from causes beyond the control of Goodyear which delay or prevent the performance of any obligation under this Consent Decree. "Force Majeure" shall not include: (1) increased costs or expenses; or (2) delays due to acts or omissions of Loral Corporation while it owns any property within or contiguous to the Site. Goodyear reserves the right to demonstrate that under appropriate circumstances, events beyond the control of Goodyear include but are not limited to: adverse weather conditions; injunctions and other orders issued by courts or administrative agencies; delay associated with achieving the requirements of Paragraph VII. because to do so has become technically impracticable from an engineering perspective or because it would result in greater risk to human health and the environment than alternative options; unanticipated breakage or accident to machinery, equipment, or lines of pipe despite diligent maintenance; delay in obtaining access to property upon which the Work is to be done provided the property is no longer owned by Loral

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2 Corporation; delay in obtaining permits or approvals required
3 for the Work; and selection by the State of Arizona of a
4 response action inconsistent with the terms of this Consent
5 Decree. EPA reserves the right to contend that any of the
6 above circumstances do not constitute events beyond the control
7 of Goodyear.

8 Goodyear shall have the burden of proving by clear and
9 convincing evidence that any delay is or will be caused by
10 events beyond its control and that the duration of the delay
11 requested is necessary.

12 In the event of a force majeure, the time for performance
13 of the activity delayed by the force majeure shall be extended
14 for the minimum time necessary to allow completion of the
15 delayed activity but in no event for a period longer than the
16 period of the delay attributable to the force majeure. The
17 time for performance of any activity dependent on the delayed
18 activity shall be similarly extended. EPA shall determine
19 whether and to what extent the time for performance shall be
20 extended. Goodyear shall adopt all practicable measures to
21 avoid or minimize any delay caused by a force majeure.

22 In the event Goodyear discovers a force majeure, Goodyear
23 shall orally notify EPA's Project Coordinator no later than
24 forty-eight (48) hours after Goodyear becomes aware of the
25 occurrence of the force majeure and shall notify EPA, in
26 writing, no later than seven (7) calendar days after discovery
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of the force majeure, of the anticipated length and cause of the delay. If EPA agrees that a delay is or was attributable to the "force majeure" event, EPA and Goodyear shall modify the requirements of the Work to provide such additional time as may be necessary to allow the completion of the specific phase of Work and/or any succeeding phase of the Work affected by such delay, with such additional time not to exceed the actual duration of the delay. In the event that EPA and Goodyear cannot agree that any delay in the Work has been or will be caused by circumstances beyond the control of Goodyear, or as to the appropriate length of the delay, the dispute shall be resolved in accordance with Paragraph XXII (Dispute Resolution).

XXIV. FORM OF NOTICE

When notification to or communication with EPA, Goodyear or the State is required by the terms of this Consent Decree, it shall be in writing, postage prepaid, and addressed as follows:

As to EPA:

EPA Project Coordinator - PGA Site
Superfund Enforcement Branch
U.S. Environmental Protection Agency
215 Fremont Street
San Francisco, CA 94105

As to Goodyear:

Manager
Corporate Environmental Engineering
Dept 110-C
Goodyear Tire & Rubber Company
1144 East Market Street
Akron, OH 44316

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As to the State:

Theo Camlin
Arizona Department of Environmental Quality
2501 N. Central Avenue
Suite 400
Phoenix, Arizona 85007

Any submission to EPA for approval pursuant to this Consent Decree shall be made to the address shown above and shall be made by overnight mail or some equivalent delivery service.

XXV. MODIFICATION

The parties recognize that information or data gathered during the performance of the Work required by this Consent Decree may indicate that modifications to the Work are necessary to accomplish the objectives of Paragraph V and/or VII of the Consent Decree. In that event, Goodyear may recommend in writing modifications to the Work or the schedule for the Work's performance. Such modifications shall not be made prior to their written approval by EPA. If EPA denies a request for modification by Goodyear, Goodyear may invoke the dispute resolution process of Subparagraph XXII.B.; provided, however, that judicial review shall not be available for any such dispute. Any modifications ultimately made shall be memorialized in writing by EPA, made available to Goodyear, and constitute a modification of the Work.

Except as provided in this Paragraph or in this Consent Decree, there shall be no modification of this Consent Decree without written approval of all parties to this Consent Decree.

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XXVI. ADMISSIBILITY OF DATA

In the event that the Court is called upon to resolve a dispute concerning implementation of this Consent Decree, the parties waive any evidentiary objection to the admissibility into evidence of data gathered, generated or evaluated pursuant to this Consent Decree.

XXVII. EFFECTIVE DATE

Except as provided in Paragraph VII, this Consent Decree is effective upon the date of its entry by the Court.

XXVIII. INDEMNIFICATION

A. Goodyear shall indemnify the United States and hold the United States harmless for any claims arising from any injuries or damages to persons or property resulting from any acts or omissions of Goodyear, its officers, employees, agents, receivers, trustees, successors, assigns, contractors, subcontractors, or any other person acting on its behalf in carrying out this Consent Decree. In the event of any suit alleging such injuries or damages, the United States will defend in good faith against such suit to the extent consistent with law and the public interest.

B. The United States shall provide notice to Goodyear of any such suit within sixty (60) days of its service upon the United States. The United States shall provide Goodyear with

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2 an opportunity to confer with the United States before settling
3 any such suit. Rights of participation by Goodyear in any such
4 suit shall be governed by the Federal Rules of Civil Procedure.

5 C. In the event the United States fails to provide notice
6 or an opportunity to confer as provided by Subparagraph B.,
7 indemnification required by this Paragraph shall be reduced by
8 any amount Goodyear demonstrates to have been caused by such
9 failure.

10 D. Pursuant to the authorities in Section 119 of SARA,
11 Goodyear shall have the right to seek indemnification from the
12 United States for response action contractors retained to
13 perform the Work.
14

15 XXIX. OTHER CLAIMS

16 With respect to any person, firm, partnership, or
17 corporation not a signatory to this Consent Decree, nothing in
18 this Consent Decree shall constitute or be construed as a
19 covenant not to sue by any signatory with respect to, or as
20 release from any claims, cause of action, or demand in law or
21 equity.
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23 XXX. CONTINUING JURISDICTION

24 The Court specifically retains jurisdiction over both the
25 subject matter of and the parties of this action for the
26 duration of this Consent Decree for the purposes of issuing
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2 such further orders or directions as may be necessary or
3 appropriate to construe, implement, modify, enforce, terminate,
4 or reinstate the terms of this Consent Decree or for any
5 further relief as the interest of justice may require.
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8 XXXI. TERMINATION AND SATISFACTION

9 A. EPA agrees that, when it selects the final remedy for
10 the PGA Superfund Site, it will address the relevancy of the
11 Work being performed pursuant to this Consent Decree to that
12 final remedy. In the event that the final remedy selected by
13 EPA for the PGA Superfund Site does not incorporate a
14 continuation of all or part of the Work required by this
15 Consent Decree, the obligations of this Consent Decree shall be
16 deemed satisfied with respect to those portions of the Work not
17 incorporated, and Goodyear shall terminate those portions of
18 the Work.

19 B. Except as provided in Subparagraph C., if the final
20 remedial action selected for the PGA Superfund Site by EPA does
21 incorporate the requirements of this Work, or if there is no
22 final remedial action selected for the PGA Superfund Site, then
23 the provisions of this Consent Decree shall be deemed satisfied
24 at the end of eight years after Goodyear commences routine
25 operations as specified in Paragraph VII D.10 of this Consent
26 Decree. At the end of this eight year period, Goodyear shall
27 relinquish control of the equipment and facilities required to
28 perform the Work to EPA or its authorized designee, unless

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2 Goodyear and EPA renegotiate the provisions of this Consent
3 Decree.

4 C. Goodyear also may petition EPA for relief from the
5 requirements of the Work and for termination of the
6 requirements of this Consent Decree if Goodyear has reason to
7 believe that one of the following conditions exist:

8 1. The requirements of the Work, including any
9 modifications thereto pursuant to Paragraph XXV of this
10 Consent Decree, are inconsistent with response actions
11 selected for the PGA Superfund Site by EPA.

12 2. The Work as defined in Paragraphs V and VII of
13 this Consent Decree is technically impracticable to achieve
14 from an engineering perspective.

15 3. The Work as defined in Paragraphs V and VII of
16 this Consent Decree will result in greater risk to human
17 health and the environment than alternative options.

18 4. The objectives of the Work as set forth in
19 Paragraph V of this Consent Decree have been achieved prior
20 to the time established for termination in Subparagraph
21 VII.C.6., and no further Work is required to maintain
22 achievement of those objectives.

23 EPA shall respond to any petition from Goodyear within 30 days
24 of its receipt. In the event of a disagreement, the dispute
25 resolution process of Paragraph XXII shall apply. Pending a
26 decision, Goodyear shall continue to perform the Work.

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SIGNED AND ENTERED THIS day of , 1988. :

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3 CONSENTED TO:

UNITED STATES OF AMERICA
Plaintiff

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6 Dated: _____

By: _____

ROGER J. MARZULLA
Acting Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

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10 Dated: 5/24/88

By: _____

BARRY S. SANDALS
Senior Counsel
Environmental Enforcement Section
Land and Natural Resources Division
United States Department of Justice
100 Van Ness Avenue, 22nd Floor
San Francisco, California 94102

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16 Dated: _____

By: _____

JAMES P. LOSS
Chief, Civil Section
Office of the United States Attorney
4000 U.S. Courthouse
230 N. First Avenue
Phoenix, Arizona 85025

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21 Dated: _____

By: _____

THOMAS L. ADAMS
Assistant Administrator for
Enforcement and Compliance
Monitoring
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

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Dated: 5/24/88

By: Daniel W. McGovern
DANIEL W. MCGOVERN
Regional Administrator
U.S. Environmental Protection
Agency
Region IX
215 Fremont Street
San Francisco, California 94105

GOODYEAR TIRE & RUBBER COMPANY
Defendant

Dated: 5.21.88

By: Robert M. Hehir
ROBERT M. HEHIR
Vice-President
Goodyear Tire & Rubber Company
1144 East Market Street
Akron, Ohio 44316

Dated: 5/21/88

By: Takashi Ito
TAKASHI ITO
Attorney
Goodyear Tire & Rubber Company
1144 East Market Street
Akron, Ohio 44316

1 Dated: 5/2/88

2 By:

William N. Hedeman, Jr.
WILLIAM N. HEDEMAN, JR.
Beveridge & Diamond, P.C.
1333 New Hampshire Ave., N.W.
Suite 900
Washington, D.C. 20036
Counsel for Goodyear Tire &
Rubber Company

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5
6 Dated: 5/21/88

7 By:

Lisa Marie Martin
LISA MARIE MARTIN
Beveridge & Diamond, P.C.
1333 New Hampshire Ave., N.W.
Suite 900
Washington, D.C. 20036
Counsel for Goodyear Tire &
Rubber Company

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